

Federal Court



Cour fédérale

**Date: 20141024**

**Docket: IMM-3977-13**

**Citation: 2014 FC 1016**

**Ottawa, Ontario, October 24, 2014**

**PRESENT: The Honourable Mr. Justice Locke**

**BETWEEN:**

**ISTVAN OLAH**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

Respondent

**REASONS FOR ORDER AND ORDER**

I. Nature of the Matter

[1] This is an application for judicial review of a decision of a member of the Refugee Protection Division (RPD) of the Immigration and Refugee Board that the Applicant is neither a Convention refugee pursuant to section 96 of the *Immigration and Refugee Protection Act (IRPA)*, nor a person in need of protection pursuant to section 97 of the *IRPA*.

[2] For the reasons set out below, I dismiss the application.

II. Facts

[3] The Applicant is a citizen of Hungary and a Roma. He claims that the following events led to his refugee claim.

[4] In March 2011, while visiting his mother-in-law, he was beaten by members of the Hungarian Guard, a paramilitary group, because he is a Roma. He was taken to the hospital where X-rays revealed two broken ribs. He was not admitted to the hospital. Rather, he was given pain medication and released. His wife reported the beating to the police. They took a report, but did not give her a copy.

[5] About a week after his beating, his wife was sexually assaulted by members of the Hungarian Guard, again because she is a Roma. She went to the hospital and reported what happened but was given no help. The Applicant and his wife reported the sexual assault to the police but they took no action. The police simply suggested that the Applicant and his wife take their complaint to the Hungarian Guards.

[6] Seeing no point in submitting their grievances to the perpetrators of the assaults, the Applicant contacted the Roma Minority Government (RMG) in an effort to address the situation. The RMG were unable to help.

[7] A few weeks after the attacks, the Applicant suffered a stroke which resulted in him being hospitalized for four days. Since then, he has had continuing physical and mental effects, including residual weakness on the left side, poor memory, difficulty with attention span, and visible frustration with his situation.

[8] Following these incidents, the Applicant and his wife decided to leave Hungary. They arrived in Canada in August 2011.

[9] They initially claimed asylum together, but their claims have since been separated.

### III. RPD's decision

[10] The RPD concluded that several important aspects of the Applicant's narrative lacked credibility. The RPD also concluded that the Applicant had failed to establish that state protection was not available to him in Hungary. The Applicant's claim for asylum would have been denied under either one of the lack of credibility issue or the state protection issue. In order to succeed in his application for judicial review, the Applicant must satisfy me that the RPD erred on both issues. Because of my conclusion that the RPD did not err on the lack of credibility issue, it is not necessary for me to address the state protection issue.

[11] The credibility issues mentioned by the RPD are discussed in greater detail below, but they can be identified as:

1. Mischaracterization of four-day hospital stay;
2. Failure to mention sexual assault in PIF (Personal Information Form);
3. Failure to produce medical and/or police reports from Hungary.

#### A. *Mischaracterization of four-day hospital stay*

[12] The RPD noted that, while the Applicant's PIF indicated that his four-day hospital stay had been the result of his beating, it became clear in the RPD hearing that the hospital stay was the result of the stroke a few weeks later.

[13] Paragraph 6 of the narrative in the Applicant's PIF reads as follows:

In March 2011, I had also been attacked by uniformed paramilitaries in Gyongyopasta outside my mother-in-law's house and suffered two broken ribs. They accused me of having watched them. I was only smoking. I saw a doctor and was in hospital four days in the nearby town of Salgotarjan. I then had a stroke after leaving hospital.

[14] At the hearing, the Applicant maintained that his four-day hospital stay was related to the injuries he suffered in the attack, until it was pointed out to him that the hospital stay was several weeks after the attack. It was only then that the Applicant clarified that the direct reason for the hospital stay was the stroke. The Applicant explained that the stroke had been caused by high blood pressure brought on by the attacks on him and his wife, and therefore he felt that the hospital stay was related to the attack.

[15] The RPD found this unconvincing and concluded that the Applicant had tried to mislead it in order to exaggerate the injuries from the attack. It noted that there is no evidence indicating that the stroke was the result of the attack. The RPD also noted the absence of any corroborating evidence of the attack.

[16] The RPD therefore concluded that, on a balance of probabilities, the attack on the Applicant never took place, and was made up to bolster his refugee claim.

B. *Failure to mention sexual assault in PIF*

[17] For similar reasons, the RPD also concluded that the sexual assault of the wife likely never took place. The RPD noted that the Applicant's PIF did not mention a sexual assault, stating instead that she was "assaulted, spit on and demeaned". The Applicant explained that a Hungarian interpreter had told him and his wife not to mention the sexual assault because it

would hurt their claim for asylum. When the RPD pointed out that the sexual assault was also not mentioned in the interview notes upon entry into Canada, the Applicant said that he respected his wife's decision not to talk about it. The Applicant's counsel also argued that the sexual assault was alluded to indirectly in the words "assaulted, spit on and demeaned".

[18] The RPD found, on a balance of probabilities, that if the Applicant's wife had indeed been sexually assaulted, it would have been characterized as a sexual assault in the Applicant's PIF. The RPD also noted the absence of corroborating evidence of the sexual assault.

C. *Failure to produce medical reports from Hungary*

[19] The RPD also drew an adverse inference from the fact that the Applicant indicated at the hearing that he had reports in Hungary related to one or both of the attacks, but that he had not brought them. The Applicant indicated that he had requested other documents to be sent to him from Hungary (and had received them), but he never requested the reports. The RPD concluded that, on a balance of probabilities, if he had access to reports in Hungary that would corroborate the alleged attacks, he would have obtained them. The RPD noted that the Applicant had had ample time to do this.

IV. Analysis

[20] Because the issues here all relate to credibility, the standard of review for the RPD's decision is reasonableness.

A. *Absence of corroborating evidence*

[21] The Applicant argues that the RPD acted unreasonably in reaching negative conclusions from the absence of corroborating evidence. The Applicant cites jurisprudence, including *Ahortor v Canada (Minister of Employment and Immigration)* (1993), 65 F.T.R. 137 [*Ahortor*], to the effect that it is an error to draw a negative inference based on the absence of corroborating evidence. It is true, and the Respondent agrees, that this is the case when there is no evidence that puts an uncorroborated allegation in doubt. However, the absence of corroborating evidence may be relevant when there is contradictory evidence that is not adequately explained. The following passage from *Ahortor*, at para 45, is on point:

The Board appears to have erred in finding the Applicant not credible because he was not able to provide documentary evidence corroborating his claims. As in *Attakora*, supra, where the F.C.A. held that the applicant was not required to provide medical reports to substantiate his claim of injury, similarly here the Applicant is not expected to produce copies of an arresting report. This failure to offer documentation of the arrest, while a correct finding of fact, cannot be related to the applicant's credibility, in the absence of evidence to contradict the allegations.

[Emphasis added]

[22] The RPD was obliged to consider all of the pertinent evidence. This includes any inconsistencies and any explanations provided by the Applicant in relation thereto.

B. *Alleged sexual assault of the Applicant's wife*

[23] As to whether there was corroborating evidence of the sexual assault of the Applicant's wife, the Respondent points to an Emergency Record dated July 9, 2012, from the Humber River Regional Hospital concerning a visit by the Applicant's wife.

[24] The RPD decision indicates that there is no corroborative evidence of the sexual assault. The RPD does not mention this report, but it was discussed during the hearing. I presume that it was considered.

[25] However, it is not clear to me that the report can be considered corroborating evidence of the sexual assault. The relevant parts of the report are written by hand and some portions are not entirely legible. The Respondent points to one sentence that clearly refers to a reported rape in Hungary in 2011. However, this does not corroborate that a rape actually occurred, just that the Applicant's wife reported a rape. From the legible portions of the rest of the report, the portions of the report recording the patient's symptoms appear to be likewise based on what she reported, rather than on what the hospital could corroborate.

[26] I am mindful also that this hospital visit took place some 15 months following the alleged sexual assault. Given that time delay, it may not be surprising that the reference to the rape in the report was based on what the patient said rather than on observations during an examination of the patient.

[27] In my view, it was reasonable for the RPD to consider this report not to corroborate the alleged sexual assault.

[28] I am also of the view that it was reasonable for the RPD to draw a negative inference from the fact that the Applicant's PIF did not mention the sexual assault. It would also have been reasonable for the RPD to accept the Applicant's explanation that he was advised by an interpreter and his wife not to mention the sexual assault, but this was the RPD's call to make.

C. *Alleged attack on the Applicant*

[29] The Applicant also argues that there is corroboration of his attack. He points to medical reports from Dr. Ritika Goel dated April 2 and April 5, 2013. Each report refers to healed fractures of two ribs. However, evidence of old rib fractures is not necessarily evidence of an attack. Many other incidents could explain rib fractures.

[30] In light of the RPD's conclusion that the Applicant exaggerated his injuries from the alleged attack, with which I agree entirely, as well as the failure to produce a contemporaneous medical report of the assault that was available to the Applicant, I conclude that the RPD was reasonable when it concluded that the attack likely did not occur.

[31] The Applicant argues that the RPD should have taken into account the Applicant's mental health issues following his two strokes when it was considering the question of the cause of his four-day hospital stay in Hungary. I find this argument unconvincing. As I understand it, the Applicant's assertion is that what he said at the hearing before the RPD was correct; the hospital stay was the result of his stroke. The lack of credibility comes mainly from the claim in his PIF that the hospital stay was the result of the alleged assault. The PIF clearly describes the attack followed by the four-day hospital stay, and only later does the stroke occur: "I then had a stroke after leaving hospital" [Emphasis added]. The PIF is a written document that was prepared with adequate time for reflection and with assistance.

V. Conclusion

[32] For the foregoing reasons, I dismiss the present application. The parties are agreed that there is no serious question of general importance to be certified.



**ORDER**

**THIS COURT'S ORDER that:**

1. The present application for judicial review is dismissed;
2. No serious question of general importance is certified.

"George R. Locke"  
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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3977-13

**STYLE OF CAUSE:** ISTVAN OLAH v. THE MINISTRY OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** SEPTEMBER 23, 2014

**ORDER AND REASONS:** LOCKE J.

**DATED:** OCTOBER 24, 2014

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